

Context

This note sets out the impacts of a revocation of the emergency economic measures contained in Emergency Measures Order (the Order), which include the obligations on financial service providers and property and casualty insurers to cease dealings with individuals found to be involved in the illegal protests, and the obligation of crowdfunding platforms and the payments services providers they use to register with FINTRAC and disclose suspicious and large value transactions. The effects listed below would also apply if the declaration of emergency expires.

Emergency Economic Measures Order

Duty on financial service providers and property and casualty insurers to cease dealings

If the Order is revoked, financial service providers would no longer be required to ‘cease dealings’ with individuals who are engaged in activities that are prohibited by the Emergency Measures Regulations. This would mean there is no longer any obligation to “freeze” accounts or suspend insurance. Accounts that were frozen or policies that were suspended under the Order could be reactivated by the financial service provider/property and casualty insurer.

If the Order is in place, law enforcement will work with financial service providers and casualty insurers to provide the information they require to unfreeze the accounts and reinstate the insurance policies.

Information disclosures by government institutions pursuant to the Order (*e.g.*, RCMP) would no longer be authorized.

Despite revocation or expiry of the Order, bank accounts may still be ‘frozen’ under Court orders obtained by private parties (*e.g.* TD’s application to the Ontario Superior Court to freeze \$1.4 million of funds sent through GoFundMe) or other levels of government (*e.g.* Ontario Attorney General order under the Criminal Code to freeze upwards of \$9 million of funds sent through crowdfunding platform GiveSendGo). Financial Service Providers that complied with the Order would continue to benefit from the immunity from liability for actions taken while the Order was in force. As was the case prior to the coming into force of the Order, financial institutions will continue to be able exercise the rights under their contracts with customers to freeze accounts where they have information or reason to believe that there has been illegal activity or fraud.

Federal government options to reinstate duties on financial service providers and casualty insurers upon revocation of the Order

Federal options to reinstate similar duties are limited owing in part to the fact that the federal legislative frameworks only apply to federally regulated financial institutions (*i.e.*, don’t apply to credit unions, non-bank financial service providers, nor property and casualty insurers). Since the activities defined in the Order (*i.e.*, public assembly that may lead to a breach of the peace, etc.) would no longer be prohibited, the Government would have to rely on existing prohibitions under the Criminal Code or define a new prohibited activity. Essential will be defining the purpose and targets of this new prohibition (*e.g.*, purpose of the current Order is to limit the

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FINTRAC Registration and the obligation to report suspicious and large value transactions

In the case of FINTRAC, the Order imposes a new registration requirement on crowdfunding platforms and payment processors that are in possession or control of property belonging to entities or individuals engaged in prohibited activities.

If the Order is revoked, FINTRAC would stop the pre-registration process which has started under the Order and would not receive reports of suspicious and large value transactions from crowd funding platforms and payments services providers. FINTRAC could also no longer retain any information that it received related to a transaction or circumstance that is no longer required to be reported to the Centre.

Despite revocation of the Order FINTRAC would continue to receive financial transaction reports from all of its reporting entities who have an existing obligation to report pursuant to the *Proceeds of Crime Money Laundering and Terrorist Financing Act* (PCMLTFA).

Options to reinstate registration and disclosure requirements on crowdfunding platforms and payments service providers upon expiry of the Order

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~~Increasing Registration and Reporting of Suspicious and Large Value Transactions, the Permanent~~

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